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**BZA-1850**  
**GLEN P. JONAS**  
**Revised Variance**

**STAFF REPORT**  
**July 19, 2012**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioner, who is also the property owner, represented by attorney Daniel Teder as well as the surveying firm, R. W. Gross and Associates, is requesting a variance to allow an existing residence to have a rear setback of 5.9' instead of the required 25' on Lot 2 of Jonas Minor Subdivision, Revised, located at 2015 Dayton Road, just south of CR 200S (Haggerty Lane), Sheffield 5 (SE) 22-3.

Originally this case had three variance requests filed in order to partially legitimize an existing situation (namely, three existing houses on one lot) and to allow the public hearing on the sketch plan for Jonas Minor Subdivision (S-4280):

1. To allow a lot width of 89.35' instead of the required 100' in the AW zone for proposed Lot 1;
2. To allow a front building setback of 30' instead of the required 40' from Dayton Road; and
3. To allow a lot width of 55.35' instead of the required 100' for proposed Lot 2.

Because the original Jonas Minor Subdivision request has been completely redesigned, the two lot width variances (Requests 1 and 3) are no longer needed. Request 2 is not needed per UZO 5-1-6(a). The new lot configuration on the revised subdivision request makes the former side property line a rear property line, which results in this request for a rear setback variance.

**AREA ZONING PATTERNS:**

The site is zoned AW, Agricultural Wooded, as is all surrounding property between Dayton Road and the Flood Plain of the South Fork of the Wildcat Creek located to the east. Land on the west side of Dayton Road is zoned A, Agricultural. Residential zoning is in place ½ mile to the south within the town limits of Dayton.

**AREA LAND USE PATTERNS:**

There are a small number of single-family residences that line the east side of Dayton Road just south of CR 200 S; the west side is mostly farmed.

Lot 1 has a 1-story, ranch-style house and a smaller house, both in existence since 1955 according to the County Assessor's Office. Because both houses shared the same property before the adoption of either the UZO or the Unified Subdivision Ordinance, they are legally nonconforming. A third residence located behind the smaller house, was illegally converted from a pole building that was constructed in 1999

(ILP #19448). The Improvement Location Permit for this pole building stated that its use was for personal storage only. Two additional permits were issued to expand the pole building in 2005 and 2007 (ILP #27742 and 29201). One of these permits was to remodel the building as a party barn and included a septic system large enough to service a 1-2 bedroom residence. This building is the subject of the rear setback variance.

The sketch plan for Jonas Minor Subdivision, Revised was approved at the July APC meeting. This revised drawing places the two older, legally nonconforming residences on the same lot and creates a flag lot (with the “pole” portion fronting Haggerty Lane rather than the original fronting Dayton Road) that contains the illegally created residence. This corrects the previous subdivision sketch plan which would have created a lot that had both the small rental house and the pole building residence located on it. That would not have corrected the illegality of building a second residence on an existing residential lot.

#### **TRAFFIC AND TRANSPORTATION:**

Dayton Road is classified as a rural secondary arterial by the adopted *County Thoroughfare Plan*. Though Lot 2's only frontage is a 20' strip along Haggerty Lane, access for this tract will remain off of Dayton Road by way of an ingress/egress easement across Lot 1. The residence has an attached two-car garage.

#### **ENVIRONMENTAL AND UTILITY CONSIDERATIONS:**

According to the County Health Department, each of the three residences has their own septic system, but they share a water well located near the ranch-style house.

#### **STAFF COMMENTS:**

The configuration of the existing improvements on the property as well as the small land area, makes the creation of a subdivision with three lots difficult to impossible to achieve. The newly configured and recently approved subdivision appears to staff to be the only solution to petitioner's self-made problem, except it changes the south *side* property line into a *rear* property line. The pole barn was originally constructed to meet the 6' side setback. Now, in order to legitimize its use as a residence, petitioner has had to subdivide his land in such a way that the 6' side setback (actually built at 5.9') is in violation of the 25' rear setback requirement for a residence.

The definition of hardship found in the UZO states that, “self-imposed situations and claims based on a perceived reduction of or restriction on economic gain will not be considered hardships.” The definition continues by stating what a self-imposed situation is, namely, “any improvement initiated in violation of the standards of this ordinance...”

Because this setback variance is needed to remedy an illegal conversion of a pole building into a residence, it clearly meets the definition of a self-imposed situation. Self-imposed situations by definition cannot be considered an ordinance-imposed hardship.

Regarding the ballot items:

1. The Area Plan Commission on July 18, 2012 determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. The buildings located on the neighbor's property to the south are at a sufficient distance to ensure adequate fire separation.
3. Use and value of the area adjacent to the property included in the variance request **WILL** be affected in a substantially adverse manner. The 25' setback requirement is there to allow adequate light and air to reach buildings. A reduced setback of this extent could adversely affect the southern neighbor's future use of his property.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. Although the shape of Lot 2 is unusual, the size of the lot is more than adequate to allow a conforming residential building.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. This is by definition a self-imposed situation which the ordinance does not allow to be considered a hardship.

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed. Petitioner's actions that converted a pole barn built "for personal storage only" into a residence have created this situation;

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. Minimum relief would be converting the residence back into the accessory structure for which it was built. At that point, minimum relief would be a setback of 10' (the required rear setback for an accessory building).

**STAFF RECOMMENDATION:**

Denial